



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-99-108-51691

Office: Nebraska Service Center

Date:

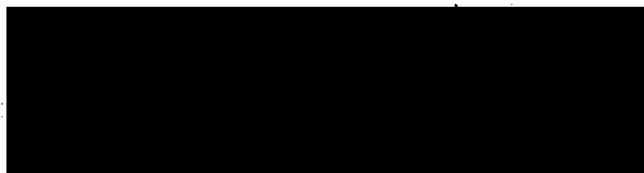
IN RE: Petitioner:
Beneficiary:



AUG 3 2000

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as the director of religious education/administration manager. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two-year membership in its denomination.

On appeal, counsel argues that the regulations should be applied "flexibly."

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the petitioner has established that the beneficiary has been a member of its denomination for the two-year period prior to filing.

8 C.F.R. 204.5(m)(1) states, in pertinent part:

An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.

8 C.F.R. 204.5(m)(2) defines a religious denomination as:

a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

The petition was filed on December 18, 1998. The petitioner must therefore establish the beneficiary's membership in its denomination from at least December 18, 1996 to December 18, 1998.

The petitioner submitted a letter from [REDACTED] the pastor at [REDACTED] dated November 20, 1998. [REDACTED] stated that the beneficiary "is a church member . . . since 1994." On May 27, 1999, the director requested that the petitioner submit additional information. In response, the district superintendent of the Central District of America, Overseas Mission Annual Conference, stated that the petitioner:

fall[s] within the jurisdiction of . . . The Korean Methodist Church . . . I understand that [the beneficiary] has served the Presbyterian church, and not the Methodist Church in Korea . . . The basic creed, form of worship, code of discipline, services and ceremonies of the Presbyterian church and Methodist Church is very similar, and should not impact negatively to [the beneficiary's] qualification.

On appeal, counsel argues that since the "religious worker provisions . . . enjoyed bipartisan support . . . [they] should be interpreted liberally to carry out the intent of the legislators,

and not be interpreted rigidly nor rigorously." Counsel's argument is unpersuasive. The regulations clearly state that the beneficiary, for at least two years immediately preceding the filing of the petition, must have been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. These regulations leave no room for liberal interpretation. The petitioner is a member of the Methodist denomination. The beneficiary is a member of the Presbyterian denomination. As such, the beneficiary has not been a member of the petitioner's denomination for the two-year period prior to filing.

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it made a valid job offer as required at 8 C.F.R. 204.5(m)(4) or that it has the ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.